

IN THE HIGH COURT OF DELHI

RSA No.168-69/2006

M/s.Devans Modern Breweries Ltd. & Anr. Appellants
! through: Mr.S.K.Goyal, Adv.

VERSUS

\$ Mrs.Sudesh Jain Respondent
^ through: Mr.Suman Kapoor, Adv.

RSA No.171/2006

M/s.Devans Modern Breweries Ltd. & Anr. Appellants
! through: Mr.S.K.Goyal, Adv.

VERSUS

\$ Mrs.Sudesh Jain Respondent
^ through: Mr.Suman Kapoor, Adv.

% DATE OF DECISION: 12.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
 2. To be referred to the Reporter or not? Y
 3. Whether judgment should be reported in Digest? Y
- : **PRADEEP NANDRAJOG, J. (Oral)**

1. Mrs.Sudesh Jain, sole proprietor of M/s.Natraj Enterprises filed a suit for recovery of Rs.95,000/- against

M/s.Devans Modern Breweries Ltd. and its managing directors impleaded as defendant No.1 and 2 respectively inter alia alleging that the defendant No.1 is engaged in business of distillation, bottling and sale of liquor and had placed an order upon the plaintiff to print and supply labels. That the labels were duly printed and supplied from time to time, last supply being on 20.5.1999 and that only part payment in advance in sum of Rs.1.5 lacs was made. The suit claimed decree for the balance amount due at the agreed price.

2. Defendants challenged territorial jurisdiction of the Courts at Delhi and inter alia pleaded that goods supplied were defective and were rejected. Defence was predicated that under Section 43 of the Sale of Goods Act 1930 it was not the duty of the defendant to physically return the rejected goods. A counter claim was filed by the defendant No.1 seeking recovery of Rs.1.5 lacs with interest thereon. Liability of defendant No.2 was denied.

3. On the pleadings of the parties issues were framed pertaining to the territorial jurisdiction of the Courts at Delhi as also to the entitlement of the plaintiff for the sum prayed for to be decreed as also interest. In respect of the counter claim an issue was framed whether defendant was entitled to a decree

and if yes at what rate of interest.

4. Vide judgment and decree dated 13.7.2005 learned Trial Judge held on all issues against the defendant.

5. Pertaining to the issue of territorial jurisdiction a finding of fact was returned that the defendant No.1 has a branch office at Delhi and that the contract was finalized at Delhi.

6. On merits, discussing the respective testimonies and documentary evidence, learned Trial Court considered Ex.DW-1/2 to Ex.DW-1/7 being alleged letters posted under UPC certificates to the plaintiff evidencing that the defendant had notified rejection of the labels. The first letter is dated 5.11.1999. It is Ex.DW-1/2.

7. Learned Trial Judge disbelieved the contemporaneous existence of Ex.DW-1/2 to Ex.DW-1/7 opining that UPC receipts can be manufactured at any point of time. It was held that rejection of the goods was communicated for the first time only on 12.6.2000 when defendants responded to the lawyers notice sent by the plaintiff.

8. On merits it has been held that since plaintiff has successfully proved the delivery of the labels and there was no dispute between the parties relating to the cost of the labels, plaintiff was entitled to the decree prayed for. Needless to state, counter claim was rejected.

9. 2 appeals were filed by the appellants challenging the rejection of the counter claim as also the decree passed in favour of the plaintiff.

10. Vis-a-vis the decree in favour of the plaintiff it was inter alia urged that decree could not be passed against the managing director of the company for the reason neither were there any averments nor was there any evidence to sustain that the managing director of the defendant company had stood as a guarantor or a surety. On merits it was pleaded that goods supplied were defective.

11. Both appeals were dismissed by the learned Appellate Court.

12. The 2 captioned appeals have been filed challenging the dismissal of the first appeal.

13. RSA No.168-69/2006 has been filed by the defendant No.1 i.e. the company and its managing director challenging the decree in favour of the plaintiff. RSA No.171/2006 has been filed challenging the rejection of the counter claim of defendant No.1.

14. In my opinion only 2 substantial questions of law arise for consideration in both the appeals. The same are as under:-

(a) Whether on the evidence on record finding recorded in favour of the plaintiff that the goods were deemed to be appropriated by the defendant No.1 is sustainable in law?

(b) Whether decree against the managing director of defendant No.1, impleaded as defendant No.2 is sustainable in law?

15. Learned counsel for the parties have addressed arguments.

16. On the first substantial question of law, suffice would it be to note Section 42 of the Sales of Goods Act 1930. It reads as under:-

“42. Acceptance.– The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.”

17. It is thus apparent that where within a reasonable time rejection of goods is not intimated by the buyer he is deemed to have accepted the goods.

18. In the instant case, last supply was effected on

20.5.1999. Document accepted by courts below as first rejection by the plaintiff was the lawyer's response dated 12.6.2000 by the defendants. With respect to Ex.DW-1/2 to Ex.DW-1/7 relied upon by the defendants relevant would it be to note that the said documents are letters purportedly sent under certificate of posting. The first letter i.e. Ex.DW-1/2 is dated 5.11.1999.

19. Admittedly, the dispatch register was not proved by the defendants. A finding of fact has been recorded by the learned Trial Judge, duly affirmed in first appeal, that the postal certificates could be fabricated. Adverse inference has therefore to be drawn against the defendants who failed to produce their dispatch register.

20. Assuming that the said letters were written, I note that the first in the series is Ex.DW-1/2. It is dated 5.11.1999. As noted above, last supply of labels was effected on 20.5.1999. Assuming rejection was intimated on 5.11.1999, the rejection would not be within reasonable time. Thus, even considering Ex.DW-1/2 to DW-1/7, the rejection not being within reasonable time, goods would be deemed to have been accepted.

21. Why am I so holding? Obviously, reasonable time has to be computed with reference to the nature of the

goods

page 6 of 8

supplied. They were labels to be affixed on liquor bottles. Any person could have detected the defect within a month or two of delivery thereof.

22. Before concluding on this issue I may note that oral testimony of witnesses of the defendant that rejection was intimated telephonically has not been believed by the Courts below. This relates to appreciation of facts. An activity which is prohibited in a second appeal.

23. I thus hold that on the evidence available with the Courts below the finding returned that goods are deemed to be appropriated is legal and valid.

24. On the second issue, suffice would it be to note that there are no averments in the plaint that defendant No.2 stood personal guarantee or was a surety. It is settled law that vicarious liability on a person has to be as per law. If a statute makes the managing director of a company so liable, liability would be as per law. For example, Section 141 of the Negotiable Instruments Act 1881. Contractual liability of a third party for a debt payable by the debtor has to be where the said person has either indemnified or stood as a guarantor or has offered himself as surety.

25. Learned counsel for the respondent (plaintiff)

concedes that on the pleadings and the evidence, decree could not have been passed against the managing director of defendant No.1.

26. Thus, the second question of law is answered by holding that the suit of the plaintiff could not have been decreed against defendant No.2. The suit could be decreed only against defendant No.1.

27. In view of the fact that suit filed by the plaintiff requires to be decreed against defendant No.1 the inevitable sequitur has to be that the counter claim has to be rejected.

28. RSA No.171/2006 is accordingly dismissed.

29. RSA No.168-69/2006 is partly allowed. Impugned judgment and decree dated 13.7.2005 passed by the learned Trial Judge as also the impugned judgment and decree dated 30.3.2006 passed by the learned Appellate Court in RCA No.58/05 is partly reversed, in that, the appeal is allowed vis-a-vis appellant No.2. The rest of the judgment and decree i.e. vis-a-vis appellant No.1 is affirmed. The suit is dismissed against defendant No.1.

30. LCR be returned forthwith.

31. No costs.

November 12, 2007
dk-bainsla

PRADEEP NANDRAJOG, J.